

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 96-0167 ST**  
**Sales and Use Tax**  
**For The Tax Periods: 1991, 1992, and 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I.     Sales/Use Tax:** Trailer Purchase

**Authority:** IC 6-2.5-2-1, IC 6-2.5-3-2, IC 6-8.1-5-4

Taxpayer protests the assessment of use tax not paid on its purchase of a trailer.

**II.    Sales/Use Tax:** Dry Turf Applicator

**Authority:** IC 6-8.1-5-4

Taxpayer protests the assessment of use tax on a "dry turf applicator."

**III.   Tax Administration:** Negligence Penalty

**Authority:** Negligence Penalty

Taxpayer protests assessment of negligence penalty.

**STATEMENT OF FACTS**

Taxpayer provides lawn, tree and shrub care services to primarily the residential market.

**I.     Sales/Use Tax:** Trailer Purchase

**DISCUSSION**

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. Use tax is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC 6-2.5-3-2.

Taxpayer purchased a trailer and contends that sales tax was already paid. The Department requested that taxpayer provide an invoice identifying the particular trailer and the appropriate

“Application for Certificate of Title” stating the sales tax paid. Taxpayer submitted evidence of payment for sales tax for another item not at issue in this protest. Taxpayer asserted that the evidence submitted was “representative” of the transaction at issue. Taxpayer has failed to present documentation to show that sales or use tax was paid on the specific trailer that it is asking be removed from the assessment.

Pursuant to IC 6-8.1-5-4(a), every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. Records should include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks. Taxpayer has not submitted sufficient documentation to support its protest. Thus, the protested item is taxable.

### **FINDING**

Taxpayer’s protest is denied.

## **II. Sales/Use Tax: Dry Turf Applicator**

### **DISCUSSION**

Taxpayer argues that tax has been paid on its purchase of a “dry turf applicator.” Taxpayer submitted evidence of payment for sales tax for several items, none of which represent tax paid on this particular item. Taxpayer has failed to present documentation to show that sales or use tax was paid on the specific dry turf applicator that it is asking be removed from the assessment.

Pursuant to IC 6-8.1-5-4(a), every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. Records should include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks. Taxpayer has not submitted sufficient documentation to support its protest. Thus, the protested item is taxable.

### **FINDING**

Taxpayer’s protest is denied.

## **III. Tax Administration: Negligence Penalty**

### **DISCUSSION**

Taxpayer was assessed a negligence penalty for failure to remit use tax to the Department. Taxpayer argues that this deficiency was due to reasonable cause. Taxpayer argues the reasonable cause was due to large growth in its business and its concentration on sales tax issues. Taxpayer contends that its focus on sales tax issues shows that its deficiency as to use tax was not due to willful neglect. The Department finds that the taxpayer’s lack of sufficient records and use tax deficiency warrant the assessed negligence penalty.

**FINDING**

Taxpayer's protest is denied.